

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Gino Foianini</p> <p>RESPONDENT</p>	<p>CONTROL STRUCTURE AND MEASURING DEVICE NOTICE</p> <p>SEAA No. 1413 DISTRIBUTION ACCOUNTS: 102864 WATER RIGHTS: 41-3481</p>
---	--

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

- (a) the measuring device; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondent diverts water from the East Fork of Beaver Creek into the Gregory Canal under above-captioned Utah water right and distribution account.
2. A 3-ft Parshall Flume is installed to measure the flow delivered into the Gregory Canal after it is diverted or rediverted on East Fork Beaver Creek.

3. The 3-foot Parshall Flume is outfitted with recording and telemetry operated by the State of Wyoming in distributing the available water.
4. A bypass gate exists parallel to the 3-ft Parshall Flume.
5. Whenever the bypass gate is opened, water passes into the canal unmeasured and unrecorded by the telemetry system.
6. All the Gregory Canal water must be included in the telemetry measurement and record.
7. The flow capacity of the existing flume is approximately 47 cfs with telemetry, but the staff gage height limits the manual flow measurement to about 38 cfs.
8. The existing flume does not have sufficient capacity to measure all of the water delivered under Respondent's water right 41-3481 when excess water is available to divert during high flows each year.
9. The existing flume is not large enough to measure the total canal flow during high flows. A portion of Respondent's water right 41-3481 will not fit within the flume whenever all senior rights are delivered and excess flow is available under Respondent's junior right.
10. The seepage barrier installed by the Respondent along the upstream edge of the 3-ft Parshall Flume protrudes upward above the floor of the flume and interferes with the flume calibration.

III. ACTIONS REQUIRED

1. All water deliveries into the canal must pass through the flume.
2. The flume bypass structure must be permanently removed.
3. The staff gage is too short to measure high flows. An accurate staff gage reading must be available to the water commissioner at all times.
4. The seepage barrier along the upstream edge of the flume must be removed or trimmed flush with the floor of the flume to prevent interference with the calibration of the flow measurement.
5. The flume must provide accurate flow measurements from both the staff gage reading and the telemetry equipment.
6. **The work must be completed on or before May 15, 2011.**

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).

4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005).

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert W. Leake, P.E.
Regional Engineer
Vernal Office/Eastern Region
Utah Division of Water Rights
(435) 781-5327

Ben Anderson, P.E.
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469
1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 24th day of November, 2010



Ben Anderson, P.E.
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 24th day of November 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Gino Foianini
1248 CO RD 238
Lyman, WY 82937



Kelly Horne
Field Services Secretary

cc: Robert Leake, Regional Engineer
Jade Henderson, Wyoming State Engineer's Office
Todd Covolo, Water Commissioner

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER: 0308 2040 0001 6219 8639

Postage and Delivery Confirmation fees must be paid before mailing.
Article Sent To: (to be completed by mailer)

(Please Print Clearly)
Gino Foianini 82937
1248 CO RD 238, Lyman WY

Postmark Here
11/24/10

POSTAL CUSTOMER:
Keep this receipt. For inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)
☒ Priority Mail™ Service
☐ First-Class Mail® parcel
☐ Package Services parcel

PS Form 162, May 2002 (See Reverse)